

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6174 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes(only :

bracketed portion)

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

No.

5. Whether it is to be circulated to the Civil Judge? : NO
No.

LM PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR PC MASTER for Petitioner

Mr. S.T.Mehta, Assistant G.P. for

M/S PATEL ADVOCATES for Respondent No. 1, 3

FRESH NOTICE REQD(N) for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/12/1999

ORAL JUDGEMENT

#. By way of this petition, the petitioner has prayed
that the action of the respondents in not giving him the
benefit of temporary clerk as well as permanent clerk

from work charged clerk is illegal and arbitrary and has also further challenged the action of the respondents in giving the said benefits to his juniors without considering his claim. It is the case of the petitioner that he was initially appointed as a daily wager clerk at Mankodi in the year 1959 and he worked upto April 1965. Thereafter from 6.3 1965 he was appointed as work charged and accordingly he is serving with Roads and Buildings Department since 1959. He was also allowed to cross EB in the year 1974 which order is at Annexure-C to the petition.

#. It is the say of the petitioner that the seniority list of the work charged employees is being maintained division wise and he is serving as work charged clerk since 1965 and in his division, the seniority of the petitioner is far ahead and to the knowledge of the petitioner he is first in the seniority list. Of course the extract of the seniority list is not produced. However, it is averred in the petition that even though he had asked for the copy of the seniority list, the same is not made available to him. The petitioner has made various representations for giving him the benefit of temporary status of a clerk from work charged clerk. The representations made by the petitioner are at Annexures F and H to the petition. Even though the petitioner had made various representations to the department, no reply has been given by the department to the petitioner.

#. Shri V.P.Patel who was junior to the petitioner has been given the order of temporary clerk with effect from 24.12.1980 and therefore, in his representation at Annexure-H he had given all the details as to how he is senior to said Patel. Not only that the Executive Engineer has recommended the case of the petitioner to the Superintending Engineer by the recommendation letter. Said letter of the Executive Engineer addressed to the Superintending Engineer is annexed at Annexure.I to the petition.

#. It is shocking that no reply has been given by the respondents to the representations of the petitioner nor has any decision even seems to have been taken on the representations of the petitioner even though recommendation was made by the Executive Engineer to the Superintending Engineer. The petitioner has also averred in the petition that as per the circular dated November 13,1979 any work charged clerk/technical assistant/Mistri appointed through employment exchange and who has completed five years' service on April 15.1969 should be considered for appointment on temporary basis. It was

submitted therefore, that he should have been given the status of temporary clerk from 1977 or atleast from 1980 when his junior was given the status of temporary clerk. Ultimately, the action of the respondents in not giving the status of temporary clerk from the year 1977 and consequently not giving the benefit of permanency in the cadre of clerk has been challenged by the petitioner in this petition.

#. The petition was filed in the year 1987 which has been taken up for final hearing today. This court had recorded the statement of the learned advocate for the respondents while deciding the question of interim relief. On 13.11.1990, the following order was passed by this court:

" Learned counsel for the respondent states that the petitioner has been appointed as temporary clerk by order dated December 4, 1987. In view of this statement, learned counsel for the petitioner does not press for interim relief. Hence, no order as regards interim relief."

Therefore, since 1987, the petitioner was given status of temporary clerk. Mr. Master has fairly conceded that he does not have any factual data available as to whether the petitioner is in actual service or not or perhaps, he might have been even retired by way of superannuation. However, his grievance is that atleast the aforesaid benefit should have been made available to the petitioner from 24.12.1980 when his junior Mr. Patel was given the status of temporary clerk.

#. In fact the Executive Engineer on 21.3.1983 had also sent a recommendation in favour of the petitioner for absorbing him as temporary clerk which letter is at Annexure.I to the petition.

#. However, in view of the fact that considerable time has passed and it is not possible to know whether the petitioner is in service or not. But since the petitioner's representations are not disposed of, I direct the respondent no.2 to decide the aforesaid representations which are at Annexures F and H which is regarding granting of benefit of status of temporary clerk to the petitioner with effect from December 1986 when his junior was granted the said benefit. If ultimately the authority accepts the representation considering the facts and record of the case, then the

consequential benefits including the benefit of permanency be given to the petitioner as if he was granted the status of temporary clerk since December 1980 when his junior was given the said benefit. In the circumstances, the concerned authorities are directed to dispose of the said representations at Annexures F and H in the light of the aforesaid observations preferably within three months from the date of receipt of the writ of this court and the authorities are directed to communicate the decision on the representation of the petitioner. If the decision in the representation is adverse to the petitioner, it will open for the petitioner to challenge the same before the appropriate forum in accordance with law. If the petitioner has already retired from service, the benefits which can be given at the time of his superannuation be made available to the petitioner on the basis of the decision that may be taken on the aforesaid representation. The petitioner therefore, is required to be allowed partly and the same is accordingly allowed. Rule is made absolute to the aforesaid extent only.

{{#. Before parting with this judgment I may state that even though the petition is pending since 1987, there is no affidavit in reply on record. Learned AGP therefore, is not in a position to throw any light on the controversy raised in this petition. In such case, the court has to decide only on the basis of averments made in the petition. With the result that a good arguable case of the Government may suffer for want of instructions or affidavit in reply. Even no para wise remarks are available with the AGP. Therefore, it is hoped that proper care would be taken by the Government to see that quick instruction may be sent with detailed para wise remarks to the concerned solicitor or Government Pleader who is incharge of the case so as to enable them to prepare affidavit in reply. It has been noticed that sometimes even straight way para wise remarks are submitted to the court. This is also not proper because the other side may not be in a position to offer its comments unless proper affidavit in reply is served to the other side in advance. It is therefore, necessary that the Government Pleader should prepare affidavit in reply in advance on receiving the para wise remarks from the concerned Government department. I am sure that proper care will be taken in future in this connection so that it may help the court in adjudicating the controversy properly by appreciating full facts of the case. In fact it has been pointed out by the Government Pleader that after the admission of the

Special Civil Applications, the case papers are normally kept with the solicitors and the Assistant Government Pleaders do not have all the case papers with them as it may be in transit between the office of the solicitor and the office of the Government Pleader. Non availability of the case papers with the solicitor or Government Pleader hampers the hearing of the matters and therefore, proper care is required to be taken by either the concerned solicitor or by the Government Pleader to see that effective representation is made before the court at the time of hearing of the case. It is hoped that proper care will be taken to see that pleadings are completed and things are put in order at the time when the matter is reached for final hearing.}}